REMARKS

Applicants wish to thank Examiner Cheung for the courtesy extended during a personal interview on August 16, 2004 at the U.S. Patent and Trademark Office, with Applicant's representatives. The remarks contained herein substantially reflect those discussed at the interview.

Claims 1-15 are pending in this application.

Applicant's independent claim 1, in one embodiment, is directed toward a process for producing a resin in the presence of a chromium and titanium-based catalyst, wherein the catalyst is activated by (a) contacting said catalyst in a reactor at a temperature of between about 370-540°C (700-1000°F) with an atmosphere consisting essentially of an inert gas; and then (b) introducing an oxidant into said reactor so that the temperature of said reactor does not exceed about 510°C (950°F); and then (c) completing the activation of said catalyst in a reactor at a temperature of about 605-695°C (1120-1280°F) under an oxidizing atmosphere.

The Office Action cites U.S. Patent 6,432,792 to Debras et al. as prior art (emphasis added). Applicants respectfully inform the Examiner, for reasons of clarity, that the correct citation is probably U.S. Patent 6,423,792 to Debras et al. (hereafter '792) (emphasis added).

Applicants respectfully assert that '792 is, in one aspect, directed toward a process for producing a polyethylene resin having a monomodal molecular weight distribution in a single polymerization reactor using a chromium-based catalyst system, wherein the system has a first and second catalyst. '792 teaches to activate both catalysts "at a high temperature under air." (column 4 lines 60-61). In contrast to Applicant's claim 1 step (a), '792 does not fairly teach or suggest a process for the

activation of a catalyst, which includes the presence of an inert gas. Moreover, '792 fails to teach or disclose the prevention of a temperature spike during the transition from a reactor environment of substantially inert gas to a reactor environment of substantially air, which is in contrast to Applicant's claim 1 step (b). For these reasons Applicants assert that '792 does not render their claimed invention obvious under 35 U.S.C. § 103. Applicants respectfully request the withdraw of the rejection to claims 1-15.

Applicants remind the Examiner that during the in person interview the allowability of claims 11-15 was placed into issue by the Examiner. Applicants take this opportunity to proactively address this issue and respectfully disagree. Claim 11 is directed toward a resin suitable for use as extruded pipe comprising the residue of a chromium and titanium-based catalyst activated by the above described process. Applicants submit that the activation process of claim 11 results in the production of a novel and non-obvious catalyst. Therefore, Applicants respectfully assert the resin itself is novel and non-obvious because claim 11 incorporates the residue of the aforementioned catalyst. Moreover, Applicants respectfully assert claims 12-15 are in condition for allowance as they further depend from claim 11.

Applicants additionally remind the Examiner that the issue of nonstatutory-type double patenting was raised during the interview. The Examiner suggested that while further investigation was required there might be a need terminally disclaim the present application 10/784,460 with pending application 10/784,965. Applicants take this opportunity to proactively address this issue and assert that, "nonstatutory-type double patenting rejections are based on a judicially created doctrine grounded in public policy and which is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinguishing from the claim in a first patent (M.P.E.P. § 804)."

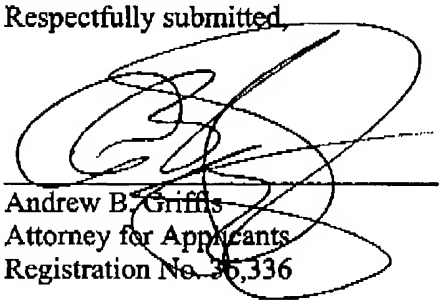
In this light, Applicants assert the rejection on the basis of nonstatutory-type double patenting is improper because 1) the two claim sets are not obvious in light of each other and 2) the issuance of these applications as independent patents will not prolong their respective patent term.

The two claim sets are not obvious in light of each other because one is directed toward a process for producing a resin suitable for use as extruded pipe, '965, and the other is directed toward a process for producing a resin suitable for use as a utility conduit, '460. The claims differ in the recitation of step (c). '965 teaches to complete the activation of the catalyst in a reactor at a temperature of about 548-638°C under an oxidizing atmosphere. In contrast, '460 teaches to complete the activation of the catalyst in a reactor at a temperature of about 605-695°C under an oxidizing atmosphere. There are significant differences between the physically properties and commercial demands of a utility conduit and an extruded pipe, namely, the utility conduit has a higher melt index, a lower molecular weight, and a greater need for processability. While it was known that the end temperature at which a catalyst was activated dictates the properties of the resin produced there is nothing in the prior art to suggest the catalyst activated by Applicant's claimed method would work to improve resins intended for use as an extruded pipe and a utility conduit. Applicants submit that absent experimentation there was no suggestion or motivation that the disclosed process was compatible for use in the extruded pipe art and the utility conduit art.

The issuance of these applications as independent patent will not prolong their respective patent term because these applications were filed with the United States Patent and Trademark Office on the same day (February 23, 2004). Therefore, under the new rule their patent terms are set to expire "20 years from the date on which the application was filed in the United States" 35 U.S.C. 154(a)(2). For the above reasons, Applicants respectfully submit that the non-obviousness type rejection is rendered moot.

Applicants respectfully submit that the presently pending claims are in condition for allowance and favorable action thereon is respectfully requested.

Respectfully submitted,



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